

Division of Marine Fisheries

Fishery Management Plan Study Report

Oct. 1, 2010



During the 2010 legislative session, S.L. 2010-152, Sec. 20 (SB 900, Sec. 20) was enacted and directs that the Division of Marine Fisheries shall study how the fishery management plan process could be made more efficient without impairing public input into the process. The division shall report its findings and recommendations, including any legislative proposals to the Joint Legislative Commission on Seafood and Aquaculture no later than October 1, 2010.

Background

G.S. 113-182.1 requires the Division of Marine Fisheries to prepare fishery management plans (FMP) for review and adoption by the Marine Fisheries Commission. FMPs include a stock assessment, a characterization of the fishery, habitat considerations, identified issues/concerns and management strategies to address those issues/concerns. Long-term sustainability of the stock is the goal of any species-specific FMP.

This statute also directs that the Marine Fisheries Commission chairman shall appoint a FMP advisory committee to assist the Division of Marine Fisheries in the development of each FMP and that the Marine Fisheries Commission's four regional advisory committees (Northeast, Central, Southeast and Inland) shall be consulted before submission of an FMP for Joint Legislative Commission on Seafood and Aquaculture (JLCSA) review. In addition to the regional committee review, the Marine Fisheries Commission has also found it beneficial for a draft FMP to be reviewed by its pertinent subject-matter advisory committees (Finfish, Shellfish, Crustacean and Habitat and Water Quality.)

The process of developing an FMP is a collaborative effort between fishermen, scientists, environmental groups and other state and federal agencies. An FMP advisory committee is appointed by the Marine Fisheries Commission chairman and advises the Division of Marine Fisheries on the development of an individual FMP.

Each FMP is produced by following an established protocol or schedule of events. The total number of FMP advisory committee meetings depends on the number of issues to be discussed for that fishery. At each meeting of an FMP advisory committee, the Division of Marine Fisheries provides information regarding a particular concern along with an array of viable management options to address the issue. The FMP advisory committee then discusses the options and selects its preferred option by majority vote. The Division of Marine Fisheries considers the advisory committee position in formulating its recommendation and both positions are presented to the Marine Fisheries Commission.

The Marine Fisheries Commission then sends the draft FMP out to its regional (4) and subject-matter (2) advisory committees to receive additional public comment and committee input. Once this input is received the Marine Fisheries Commission selects its preferred management options and sends the draft FMP to the secretary of the Department of

Environment and Natural Resources for review and comment within 30-days of submission of the FMP. Once the secretary of the Department of Environment and Natural Resources has completed his FMP review, the department submits the FMP to the JLCSA for its 30-day review and comment period.

Once the executive and legislative review is complete, the FMP comes back to the Marine Fisheries Commission and adjustments may be made by the commission incorporating Department of Environment and Natural Resources, JLCSA and additional Division of Marine Fisheries input. The draft FMP is then conditionally approved and moves into the rulemaking stage of the process. However, the final FMP is approved when associated rules are approved by the Marine Fisheries Commission.

FMPs are reviewed and/or amended at least once every five years.

During the last session S.L. 2010-15 (H.B. 1710) was enacted and provides that if the secretary of the Environment and Natural Resources determines that it is in the interest of the long-term viability of a fishery the secretary may authorize the Marine Fisheries Commission to develop temporary management measures to supplement an existing FMP without going through the full FMP process. During the next review period for an FMP supplemented by temporary management measures, the Marine Fisheries Commission would either incorporate the temporary management measures into the FMP or the temporary management measure would automatically expire. This new refinement to the FMP process will greatly aid the Division of Marine Fisheries and the Marine Fisheries Commission in responding more rapidly to situations impacting the long-term viability of the state's fisheries.

Findings and Recommendations

The existing FMP process is cumbersome and lengthy. Since 1998, 18 first order/initial FMPs and subsequent amendments have been developed for North Carolina's commercially or recreationally significant species or fisheries. FMPs typically take two years to complete, with approximately 20 various meetings where an FMP is discussed during assorted stages of development.

The Division of Marine Fisheries recommends changes in two areas – modifying or removing the time impediments that currently exist in relation to the JLCSA review of FMPs and restructuring the Marine Fisheries Commission's advisory committees to allow for a more streamlined and cost effective review of FMPs.

JLCSA - The JLCSA typically meets in the fall and early winter of each year; it does not meet during the legislative session. FMP development must be scheduled so the 30-day review by the JLCSA coincides with a time when it will be available to meet, often causing significant delays. For example, the Spotted Seatrout FMP was approved by the Marine Fisheries Commission in May 2010, but was not reviewed by JLCSA until Sept. 15, 2010, creating a four-month delay. Modifying or removing the JLCSA 30-day mandated review for draft FMPs is needed to improve the timeliness and efficiency of the process. The following are viable options to accomplish this recommendation:

- Require the Department of Environment and Natural Resources and JLCSA FMP review/comment period to occur simultaneously, and within the 30 calendar days immediately following approval of any draft FMP or draft FMP amendment;
- Require only first-order/initial FMPs to have the mandated 30-day JLCSA review and that subsequent FMP reviews and amendments are exempt from the 30-day review requirement;
- Use the existing FMP annual report mechanism as the opportunity for the JLCSA to provide comment on FMPs and remove the 30-day review requirement; and/or
- Have the JLCSA use the multiple comment opportunities that occur during the FMP development process.

Advisory Committees – The Division of Marine Fisheries recognizes and supports the need to have an advisory committee assist in the development of FMPs; therefore, the current structure and operating procedures for FMP advisory committees should be maintained. In addition, the requirement that draft FMPs should be reviewed by the Marine Fisheries Commission’s regional and appropriate standing advisory committees should be maintained; however, those advisory committees should be condensed for efficiency and budgetary savings as follows:

- Combine the existing Shellfish and Crustacean advisory committees into one committee named Shellfish/Crustacean Advisory Committee;
- Combine the existing four regional advisory committees (Northeast, Central, Southeast and Inland) into two regional committees:
 - The Northern Advisory Committee, encompassing areas from the Virginia line south through Hyde/Pamlico counties and any counties to the west; and
 - The Southern Advisory Committee, encompassing areas from Carteret County south to South Carolina line and any counties to the west;
- Maintain the Finfish Advisory Committee;
- Maintain the Habitat and Water Quality Advisory Committee;
- Use the Finfish, Shellfish/Crustacean and Habitat and Water Quality advisory committees as the FMP Advisory Committee when feasible;
- Maintain the 11-member requirement for these advisory committees; and
- In addition to the 11-member committee, require all advisory committees be co-chaired by two Marine Fisheries Commission members.

The public’s ability to comment and participate in the FMP process should not be impaired by implementing these changes to the Marine Fisheries Commission advisory committee structure. The public can still offer comment at:

- All FMP advisory committee meetings;
- All regional and standing advisory committee meetings;
- All Marine Fisheries Commission meetings; and
- All Marine Fisheries Commission hearings for proposed rules.